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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/715,660	11/18/2003	Herbert G. Ross JR.	11201/11802	5349

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EXAMINER	
ROJAS, BERNARD	
ART UNIT	PAPER NUMBER
2832	

DATE MAILED: 11/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/715,660	ROSS, HERBERT G.	
	Examiner	Art Unit	
	Bernard Rojas	2832	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on *19 August 2005*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-14* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☒ Claim(s) *11-14* is/are allowed.

6)☒ Claim(s) *1-10* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

Applicant's arguments filed 08/19/2005 have been fully considered but they are not persuasive.

In response to applicant's argument that Thomas and Muller is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Thomas discloses the design gauge composed of reed switches actuated by a magnet. Although Thomas discloses a use of the gauge as a boom angle indicator, it does not mean that the inventive gauge of Thomas cannot be used in other applications. Muller teaches an improved robust reed switch configuration that decreases the flux density of the dial magnet required to actuate the reed switch and can easily adjust the magnetic flux density of the reed switch to accommodate for variances in its sensitivity (col. 11, lines 62 - 67 and col. 10, lines 59 - 64).

Therefor it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the improved reed switch assembly of Muller into the gauge assembly of Thomas to obtain the previously discussed benefits.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208

USPQ 871 (CCPA 1981); *In re Merck & Co.,* 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mueller et al. [US 5,438,869] in view of Thomas Jr. [US 3,859,651].

Claim 1, Thomas discloses a dial assembly [Figure 1] comprising: a first member [10] having a pivot pin [15] attached thereto; a dial magnet [17] rotatably mounted on said pivot pin; a reed switch assembly [Figure 4] positioned operatively adjacent to said dial magnet comprising: a reed switch [36-44].

Thomas does not teach a bias magnet positioned such as said reed switch is held in the first position when the poles of said dial and bias magnets are in a first orientation and will be held in a second position when the poles of the dial magnet and bias magnet are in a second orientation.

Mueller et al. discloses a bias magnet [140] positioned adjacent to a reed switch that is held in the first position when the poles of the dial and bias magnets are in a first orientation and will be held in a second position when the poles of the dial magnet and bias magnet are in a second orientation [Figure 7].

It would have been obvious to one of ordinary skill in the art at the time the invention was made to add a biasing magnet to the reed switches in the gauge of Thomas in order to decrease the flux density of the dial magnet required to actuate the reed switch and to easily adjust the magnetic flux density of the reed switch to accommodate for variances in its sensitivity [Col. 11, lines 62 – 67 and Col. 10, lines 59 – 64].

Claim 2, Thomas discloses a dial assembly of claim 1 further comprising a cover (encloses the reed switches) defining a receptacle for receiving said reed switch assembly [Figure 4].

Claim 3, Thomas discloses a dial assembly comprising of claim 1 wherein in said first position of said reed switch the reeds of said reed switch are in contact [Figure 4, magnet 17, switch 38].

Claim 4, Thomas discloses a dial assembly comprising of claim 2 wherein in said first position of said reed switch the reeds of said reed switch are in contact [Figure 4, magnet 17, switch 38].

Claim 5, Thomas discloses a dial assembly [Figure 1] comprising: a first member [10] having a pivot pin [15] attached thereto; a dial magnet [17] rotatably mounted on said pivot pin; a second member (encloses the reed switches) attached to said first member to form a cover; a reed switch assembly [Figure 4] removably positioned operatively adjacent to said dial magnet comprising: a reed switch [36-44].

Thomas does not teach a bias magnet positioned such as said reed switch is held in the first position when the poles of said dial and bias magnets are in a first

orientation and will be held in a second position when the poles of the dial magnet and bias magnet are in a second orientation.

Muller et al. discloses a bias magnet [140] positioned adjacent to a reed switch that is held in the first position when the poles of the dial and bias magnets are in a first orientation and will be held in a second position when the poles of the dial magnet and bias magnet are in a second orientation [Figure 7].

It would have been obvious to one of ordinary skill in the art at the time the invention was made to add a biasing magnet to the reed switches in the gauge of Thomas in order to decrease the flux density of the dial magnet required to actuate the reed switch and to easily adjust the magnetic flux density of the reed switch to accommodate for variances in its sensitivity [Col. 11, lines 62 – 67 and Col. 10, lines 59 – 64].

Claim 6, Thomas discloses a dial assembly of claim 5 further wherein said first member defines a receptacle (encloses the reed switches) for receiving said reed switch assembly [Figure 4].

Claim 7, Thomas discloses a dial assembly of claim 6 further wherein said second member defines a receptacle for receiving (encloses the reed switches) said reed switch assembly [Figure 4].

Claim 8, Thomas discloses a dial assembly comprising of claim 5 wherein in said first position of said reed switch the reeds of said reed switch are in contact [Figure 4, magnet 17, switch 38].

Claim 9, Thomas discloses a dial assembly comprising of claim 6 wherein in said first position of said reed switch the reeds of said reed switch are in contact [Figure 4, magnet 17, switch 38].

Claim 10, Thomas discloses a dial assembly comprising of claim 7 wherein in said first position of said reed switch the reeds of said reed switch are in contact [Figure 4, magnet 17, switch 38].

Allowable Subject Matter

Claims 11-14 are allowed.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bernard Rojas whose telephone number is (571) 272-1998. The examiner can normally be reached on M-F 8-4:00), every other Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Elvin G. Enad can be reached on (571) 272-1990. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Bernard Rojas
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11/14/07